IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2534 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHAGUBHAI DADUBHAI BHOJAK

Appearance:

MR HARDIK C RAWAL for the Petitioner.

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/06/2002

ORAL JUDGEMENT

The petitioner-Corporation has filed this Special Civil Applicaiton challenging the order passed by the Labour Court, in Reference (LCR) No.81 of 1997. By the impugned Award, the respondent is ordered to be reinstated in service, with 25% back wages.

Even though the respondent is served, nobody is appearing on his behalf.

It is argued by Mr.Raval for the petitioner-Corporation that the respondent was appointed as a driver and he was supposed to remain on duty regularly. Unfortunately, he remained unauthorisedly absent for the period between 7th February, 1995 and 27th February, 1995. It is also submitted that even though he applied for leave, the petitioner-Corporation did not grant the leave; still, he went on leave and according to the petitioner, the same resulted in great inconvenience to the petitioner-Corporation and the Corporation was to manage for another driver and in order to see that the passengers are not stranded, the Corporation was compelled to make alternative arrangement in hot haste. It is submitted that the respondent, who is holding a very important post of a driver, was, therefore, supposed to discharge his duty in a proper manner. The Department, after holding enquiry, ultimately, dismissed him from service. Mr.Raval also argued that in the departmental proceedings, he did not remain present and the departmental proceedings also proceeded ex parte.

The respondent-workman, ultimately, raised the Industrial Dispute and the Labour Court passed an order of reinstatement, with 25% back wages. It is argued by Mr.Raval that in the facts and circumstances of the case, even if it is presumed that the Labour Court was justified in invoking the provisions of Section 11-A of the Industrial Disputes Act, at least, it should have awarded some punishment in order to set an example to other drivers, and in order to see that there may be some deterrent effect, some penalty should have been inflicted.

After going through the Award, I am of the opinion that while exercising powers under Section 11-A of the I.D. Act, the Labour Court also should have considered the question of appropriate punishment. Since the misconduct is proved, the concerned workman should not have been allowed to go scot-free without any punishment worth the name. However, in my view, of course, it is not a case where extreme penalty of dismissal or removal was required to be imposed, and, rightly, the Labour Court did not pass any such order. However, in the facts and circumstances of the case, while confirming the order of reinstatement, I am of the opinion that some penalty was required to be imposed and considering the facts and circumstances of the case and especially when in the enquiry, misconduct is proved, I

am of the opinion that it would be just and proper to impose a penalty of withholding one increment with future effect. It is required to be noted that the respondent-workman had not remained present even during the enquiry proceedings. In that view of the matter, as well as considering the fact that the misconduct is also proved against him, he should not have been awarded any back wages, especially when the Labour Court also found that he was earning Rs.500/- to Rs.600/- per month.

Considering all these facts, the order of the Labour Court is required to be modified and it is accordingly modified. The order of reinstatement with continuity of service is not disturbed. However, the respondent is imposed a penalty of withholding of one increment with future effect. The order of payment of back wages is also set aside.

The petition is partly allowed. Rule is made absolute to the aforesaid extent, with no order as to costs.

If the concerned workman is not reinstated in service, the Corporation is directed to reinstate him in service at least within a period of one month from today.

26th June, 2002 (P.B. Majmudar, J.)

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(apj)